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SBA'S PROGRESS IN IMPLEMENTING THE PUBLIC LAW 95-507 SUBCONTRAC--ETC(U)

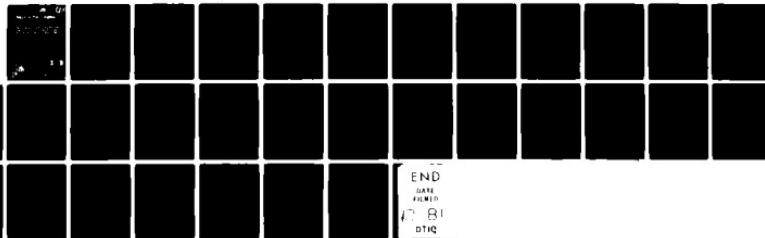
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BY THE COMPTROLLER GENERAL

# Report To The Congress OF THE UNITED STATES

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## SBA's Progress In Implementing The Public Law 95-507 Subcontracting And Surety Bond Waiver Provisions Has Been Limited.

The Small Business Administration, working with a Presidential Advisory Committee has not fully implemented the small business subcontracting provision. The committee has focused on obtaining subcontracts from Federal contractors rather than private businesses not heavily engaged in Federal procurements. SBA's efforts have been limited primarily to 1-year agreements with four corporations under which it refers potential subcontractors to them. The corporations have awarded only two subcontracts to the small businesses SBA referred.

SBA has not issued procedures for identifying and handling surety bond waivers; consequently, no waivers have been granted.

GAO recommends changes SBA should make to maximize subcontracting opportunities for small businesses. Also, GAO suggests that the Congress consider extending the bond waiver provision for 2 years and require SBA to report to the Congress on the provision's effectiveness.



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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20540

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To the President of the Senate and the  
Speaker of the House of Representatives

This report describes actions taken by (1) the Small Business Administration (SBA) and the Presidential Advisory Committee to promote subcontracting as a means of developing small and small minority businesses and (2) SBA to implement the surety bond waiver provision of Public Law 95-507. This law requires us to evaluate several SBA programs and report the results to the Congress.

We are sending copies of this report to the Administrator, Small Business Administration; the Director, Office of Management and Budget; and other interested parties.

*Milton J. Sorola*  
Acting Comptroller General  
of the United States

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COMPTROLLER GENERAL'S  
REPORT TO THE CONGRESS

SBA'S PROGRESS IN IMPLIMENTING THE PUBLIC LAW  
95-507 SUBCONTRACTING AND SURETY BOND WAIVER PROVISIONS HAS BEEN LIMITED

D I G E S T

The Small Business Administration (SBA) and the Presidential Advisory Committee have not fully implemented the subcontracting provision of Public Law 95-507 (Oct. 24, 1978), which is to encourage large, private businesses to place subcontracts with small and small minority firms. The Advisory Committee has focused on Federal, rather than required private sector, subcontracting, while SBA's efforts, which have been limited primarily to agreements with four corporations, have resulted in only two sub-contracts for small businesses.

Also, SBA has not implemented the surety bond waiver provision established by Public Law 95-507. This provision authorizes the SBA Administrator to waive any amount of any bond required by a Government procurement officer for, and in connection with, certain contracts provided to SBA. Detailed procedures for identifying and processing these waivers had not been finalized as of September 8, 1981. As a result, no bond waivers had been granted. However, if the provision had been implemented in 1978, only one firm would have qualified for a waiver under the current criteria. In addition, the 15 district and regional office officials GAO interviewed expressed several concerns which could adversely affect the use of surety bond waivers.

This report, one in a series GAO has issued pursuant to Public Law 95-507, follows up on an August 20, 1980, GAO report on the Small Business Act's subcontracting and surety bond waiver provisions.

SUBCONTRACTING ACHIEVEMENTS HAVE BEEN LIMITED

Under the subcontracting program, SBA, with the assistance of a 10-member, Presidentially appointed Advisory Committee, is to encourage

Tear Sheet

large businesses to place subcontracts with small and small minority firms.

GAO reported in August 1980 that (1) the Presidential Advisory Committee, which was not formed until early 1980, had not established functions and goals, (2) no clear functional relationship existed between the committee and SBA, and (3) the committee had focused exclusively on Federal subcontracting. GAO recommended that SBA and the committee develop a specific plan for promoting private sector procurements from small businesses. The plan should include (1) functional responsibilities for SBA and the committee, (2) short-range goals, and (3) a procedure for monitoring and evaluating progress. SBA agreed with GAO's recommendations. (See p. 4.)

The Advisory Committee still focused on Federal subcontracting despite GAO's previous report which stated that the committee's primary function is to promote private sector subcontracting opportunities for small businesses. The committee continued to focus on Federal subcontracting because it was uncertain of its function. Consequently, no new proposals were developed to improve SBA's ability to secure private sector procurements for small and small minority businesses. (See p. 3.)

Also, the Advisory Committee did not study and/or propose any incentives or assistance for the private sector to help train, develop, and upgrade small businesses, as the Executive order which established the committee directed. No action was taken because the committee believed that the Office of Management and Budget's Office of Federal Procurement Policy, which is charged with developing a Government-wide uniform procurement policy for implementing incentives and other procurement matters, did not encourage use of incentives to promote subcontracting. (See p. 7.)

With the change in administration, the services of the 10 members of the first Presidential Advisory Committee were terminated in July 1981. Candidates are now being considered for a new Advisory Committee.

SBA's efforts to promote small business subcontracting in the private sector has generally been limited to entering into 1-year agreements with four corporations. It plans to enter into an agreement with one additional corporation. Under

the agreements, SBA refers potential subcontractors to the corporations. Although three of the agreements have been in effect several months (one since Sept. 1980), the corporations had awarded only two subcontracts to about 100 small businesses that SBA had referred to them as of September 8, 1981.

Two of the four corporations are prime Government contractors that are required to submit subcontracting plans to SBA under another section of the Small Business Act, as amended. As a result, few, if any, additional subcontracting opportunities are likely to result from these two agreements. To maximize subcontracting opportunities for small businesses, SBA needs to emphasize entering into agreements with corporations not heavily engaged in Federal contracts, as intended by the law. (See pp. 8 and 9.)

SURETY BOND WAIVER PROVISION  
HAS STILL NOT BEEN IMPLEMENTED

GAO reported in August 1980 that SBA published proposed rules and regulations for surety bond waivers on April 4, 1980, and that, at that time, no small business had been granted a waiver. The report stated that the 17-month publishing delay was due partly to confusion within SBA about who was responsible for administering the provision. (See p. 13.)

Final regulations for surety bond waivers were published in the Federal Register on December 17, 1980. However, as of September 8, 1981, SBA still had not issued to its field offices detailed Standard Operating Procedures for identifying and processing bond waivers. This delay was due to internal problems in clearing the procedures. As a result, no surety bond waivers had been granted.

To be eligible for a surety bond waiver, a firm must be an 8(a) firm and must have been refused bonding under SBA's Surety Bond Guarantee Program--SBA can guarantee up to 90 percent of the losses under this program. Under section 8(a) of the Small Business Act, as amended, SBA obtains contracts from other Federal agencies and awards them noncompetitively to small, disadvantaged firms to help them develop into competitive firms.

GAO analyzed SBA data covering the period October 1978 through June 1981 on 8(a) firms that were refused bonding under the bond guarantee program to determine how many firms were eligible for surety bond waivers. Of the 144 firms that were refused bonding only 1 met the surety bond waiver eligibility criteria. Based on this data, even if SBA had implemented the surety bond waiver provision when it was passed in October 1978, only one firm could have been helped. However, if SBA had implemented the provision at that time, more firms might have qualified for bond waivers. Eight of 11 SBA district offices GAO spoke to said that they had denied firms contracts or admittance into the 8(a) program because of the firms' inability to obtain bonding. These firms might have been helped if surety bonding could have been waived.

GAO believes that extending the provision's expiration date would be reasonable because SBA has not issued the procedures needed to identify surety bond waiver candidates and process their applications.

The 15 SBA district and regional office officials GAO interviewed expressed several concerns which could adversely affect use of surety bond waivers. The bond waiver eligibility requirement mentioned most frequently was the SBA-imposed \$100,000 limitation on the amount of an 8(a) contract on which a bond can be waived. They believe that this limitation is too low. (See pp. 14 to 21.)

#### RECOMMENDATIONS TO THE SBA ADMINISTRATOR

GAO recommends that the Administrator, together with the new Presidential Advisory Committee, develop a specific plan for promoting, outside of Federal procurements, subcontracting for small and small minority businesses. The plan should include

- functional responsibilities of SBA and the Presidential Advisory Committee,
- short-range goals, and
- a procedure for monitoring and evaluating progress. (See p. 9.)

Also, GAO recommends that the Administrator, together with the Presidential Advisory Committee, pursuant to the Small Business Act and Executive Order 12190, study and propose any incentives and/or assistance needed by the private sector to help train, develop, and upgrade small and small minority businesses.

In addition, to maximize subcontracting opportunities for small businesses, GAO recommends that the Administrator, when entering into future agreements with corporations to use small businesses, give priority to those corporations that are not heavily involved in supplying goods and services to the Federal Government. (See p. 10.)

MATTER FOR CONSIDERATION  
BY THE CONGRESS

To allow SBA sufficient time to (1) implement the surety bond waiver provision, (2) resolve, if found substantiated, the surety bond waiver concerns perceived by its field offices, and (3) determine how effective the provision will be in assisting small and small minority businesses, GAO suggests that the Congress consider extending the surety bond waiver provision 2 years, to September 30, 1983, and require SBA to report to the Congress on the provision's effectiveness before the revised expiration date. (See p. 21.)

SBA COMMENTS

SBA said that (1) when the new Presidential Advisory Committee is formed, SBA will proceed with GAO's recommendations concerning section 7(j)(3) subcontracting and (2) a 2-year extension of the bond waiver provision will enable SBA to finalize and distribute implementing procedures to its field offices, identify eligible concerns that have a need for bond waivers, and monitor and report on the effectiveness of the bond waiver provision. (See pp. 10 and 22.)

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ABBREVIATIONS

GAO	General Accounting Office
MCAP	Minority Contractors Assistance Project, Inc.
MSB/COD	Office of Minority Small Business and Capital Ownership Development
OFPP	Office of Federal Procurement Policy
PASS	Procurement Automated Sources System
SBA	Small Business Administration
SOPs	Standard Operating Procedures

## CHAPTER 1

### INTRODUCTION

This report is one in a series of reports we have issued pursuant to Public Law 95-507, approved October 24, 1978, which requires us to evaluate certain Small Business Administration (SBA) programs. This report deals with SBA's implementation of the section 7(j)(3) small and small minority subcontracting and section 8(a)(2) surety bond waiver provisions of the Small Business Act, as amended.

On August 20, 1980, we issued a status report on SBA's implementation of these provisions and stated that, as of that time, neither provision had been fully implemented. We stated that we planned to issue a final report on both provisions at a later date. This report presents the results of our final review.

A complete list of reports we have issued pursuant to Public Law 95-507 appears in appendix I.

### SUBCONTRACTING

Public Law 95-507 amended section 7(j)(3) of the Small Business Act to emphasize subcontracting as a method of promoting the long-term viability of small and small minority businesses. Section 7(j)(3) of the act requires SBA to encourage large businesses to place subcontracts with small and small minority firms. SBA is also authorized to provide incentives and financial assistance to those large businesses that aid in training and upgrading potential small and small minority subcontractors. To ensure that section 7(j)(3) is implemented, the law explicitly states that the President appoint an Advisory Committee composed of five high-level officers from U.S. businesses and five representatives from minority small businesses. It also requires that the committee report annually to the President and the Congress on its activities. The first committee was formed in early 1980 and issued its report in April 1981.

### THE SECTION 8(a)(2) SURETY BOND WAIVER PROVISION

The section 8(a)(2) surety bond waiver provision included in Public Law 95-507 was set up as a 2-year pilot effort to help certain small businesses obtain contracts under SBA's 8(a) Business Development Program. If a qualified small business cannot obtain the necessary bonding through a surety company or SBA's Surety Bond Guarantee Program, then SBA has authority under Public Law 95-507 to waive any amount of any bond otherwise required on any Government contract under the 8(a) program.

Detailed background information on the 8(a) program, surety bonding, and surety bond waivers is included on pages 11 to 13.

### OBJECTIVES, SCOPE, AND METHODOLOGY

Because activity under the 7(j)(3) subcontracting and 8(a)(2) surety bond waiver provisions was limited, our review objectives were to identify (1) reasons for delays in implementing these provisions and (2) what, if any, potential problems there were with surety bond waivers.

Our review was made at SBA headquarters in Washington, D.C., and included an examination of the laws and legislative history pertaining to sections 7(j)(3) and 8(a)(2) of the Small Business Act. We reviewed SBA's regulations and procedures and discussed their administration with SEA program officials. Also, we interviewed Assistant District Directors responsible for the Minority Small Business and Capital Ownership Development Program (8(a) program) and a Business Development Specialist in 11 of SEA's 82 district and branch offices, and Surety Bond Representatives in 1 SBA district and 3 regional offices. As of September 30, 1980, 10 of the district offices had about 48 percent of all construction contracts awarded to active 8(a) firms. SBA had no statistics for the other district office. The offices from which officials were interviewed follow.

#### District offices

Atlanta, Georgia  
Boston, Massachusetts  
Chicago, Illinois  
Columbus, Ohio  
Denver, Colorado  
Los Angeles, California  
New York, New York  
Richmond, Virginia  
San Francisco, California  
Seattle, Washington  
Washington, D.C.

#### Regional offices

Atlanta, Georgia  
Chicago, Illinois  
Seattle, Washington

We obtained computer printouts from SBA listing (1) the construction firms admitted to the 8(a) program from October 1977 through May 1981, when a moratorium was imposed on admitting firms into the program and (2) 8(a) firms that were refused bonding under SBA's Surety Bond Guarantee Program during the period October 1978 through July 1981. We used this data to help determine the number of firms that could have possibly received bond waivers if SBA had implemented the bond waiver provision when it was passed in October 1978. Because time did not permit, the reliability of the computer data was not tested fully. We verified with SBA's field offices the list of 8(a) firms refused bonding guarantees.

## CHAPTER 2

### ACHIEVEMENTS UNDER THE SECTION 7(j)(3)

#### SUBCONTRACTING PROVISION HAVE BEEN LIMITED

Only two small and small minority businesses have obtained subcontracts as a result of SBA's and a Presidential Advisory Committee's efforts under the section 7(j)(3) subcontracting provision of Public Law 95-507. The Advisory Committee which was to facilitate subcontracting in the private sector (1) has continued to focus its efforts on Federal, rather than private sector subcontracting, (2) has not established functions and goals, (3) has not made any new proposals to improve the ability of small businesses to secure procurements outside Federal contracting, and (4) has not studied and/or proposed incentives and assistance large businesses need to help train, develop, and upgrade small businesses. As a result, few, if any, additional subcontracting opportunities have been provided to small and small minority businesses.

SBA's efforts to promote subcontracting in the private sector have also been somewhat misdirected--trying to promote subcontracting through agreements with four private corporations, two of which are prime Federal contractors that were already required under another section of Public Law 95-507 to submit subcontracting plans showing their expected use of small businesses. Therefore, no additional subcontracting opportunities are likely to result from the two agreements. Although SBA referred about 100 small businesses to the four corporations for subcontracting, the corporations had awarded only two contracts to them as of September 8, 1981.

#### THE ADVISORY COMMITTEE CONTINUED TO FOCUS ON FEDERAL SUBCONTRACTING

The Advisory Committee has continued to focus on Federal subcontracting despite our August 1980 report which stated that this emphasis was inappropriate under section 7(j)(3). The committee believed that it could best assist in implementing section 7(j)(3) by focusing on Federal subcontracting. However, the committee was uncertain about its responsibilities, functions, and goals. SBA and the committee need to focus primarily on exploring ways to promote subcontracting opportunities for small and small minority businesses outside of Federal procurements, as Public Law 95-507 intended.

Although Public Law 95-507 amended section 8(d) of the Small Business Act to provide small and small minority businesses with subcontracting opportunities, this section relates to private business subcontracting resulting from Federal contracts. This was not the Advisory Committee's intended primary objective.

Using subcontracting as a method of promoting the long-term viability of small and small minority businesses can be facilitated in both the Federal and the private business sectors. Because the Federal Government spends billions of dollars annually in private sector contracts (e.g., about \$103 billion in fiscal year 1980), we believe it is appropriate for the Advisory Committee to consider ways to make section 8(d) (Federal subcontracting) more effective, but these efforts should not be the committee's primary objective. As stated in our August 1980 report, had the Congress intended this to be the committee's primary objective, it would have established the committee under section 8(d) rather than section 7(j)(3).

In our August 20, 1980, report, we mentioned that the Advisory Committee was uncertain as to whether to direct its efforts at achieving the purposes of section 7(j)(3) or section 8(d) of the Small Business Act because both sections emphasized subcontracting. Although Public Law 95-507 does not explicitly define the Advisory Committee's objectives, the law does state that the committee is to "facilitate" the achievement of the purposes of section 7(j)(3). We also stated that the major problem in establishing objectives for the Advisory Committee had been the lack of a clear definition of section 7(j)(3)'s intent. However, based on a review of the legislative history of section 7(j)(3), we concluded that its primary objective was to encourage large businesses in the private sector, as a general and voluntary subcontracting practice, to use small and small minority businesses as subcontractors. Also, we stated that the committee's composition--five members each from large and comparatively small minority businesses--implied that the Congress expected that the committee members would have first-hand experience on how best to promote the products and services of small and small minority businesses in the private sector.

We recommended that SBA and the Advisory Committee develop a specific plan for promoting private sector procurements from small and small minority businesses. This plan was to include functional responsibilities of both SBA and the Advisory Committee, short-range goals, and a monitoring and evaluating component, so that problems impeding section 7(j)(3)'s implementation could be identified and resolved. We said that by taking these and other steps, SBA and the Advisory Committee could be in a better position to report to the President and the Congress on their success in developing private sector procurement opportunities for small and small minority businesses. SBA agreed with our recommendations.

According to available information concerning the Advisory Committee's October 1980 meeting, the committee tried to address our recommendation, but the members were uncertain about developing specific goals and objectives. For example, the committee chairman commented that it was not clear what the committee's responsibilities were. In an attempt to help the committee develop objectives and goals, the SBA Director, Office of Capital

Ownership Development, informed the committee that he believed its objective was to encourage large businesses in the private sector to make greater use of small and minority business, primarily in the private sector; however, the committee would not be limited to Federal subcontracting. As a result, the Advisory Committee decided to establish a three-member objectives/goals committee, consisting of an SBA official and two committee members, to develop specific Advisory Committee goals and objectives.

Although the Advisory Committee took this action to develop goals and objectives, it still focused on Federal subcontracting during the October meeting because it apparently thought it could best assist small businesses in this manner. For example, during the meeting, the committee discussed a letter it had sent to the President recommending changes to the Office of Federal Procurement Policy's (OFPP's) Circular 80-2. (OFPP, part of the Office of Management and Budget, has authority to develop a uniform, Government-wide procurement system and a uniform policy for implementing section 8(d) incentives.) This circular encourages major corporations to comply with section 8(d), which requires prime contractors on all Federal contracts to provide small and minority-owned businesses with the maximum practicable opportunity to participate as subcontractors in Federal contracts.

Also, the committee received a briefing from a national trade organization which, under an SBA contract, was to develop a national marketing program to generate subcontracts for minority-owned manufacturing and technical companies with respect to Federal prime contractors and their subcontractors. The committee, however, took no further action during the meeting toward developing a definitive strategy for promoting subcontracting opportunities for small and small minority businesses outside Government procurement. One committee member commented that 90 percent of the committee's time had been spent discussing ways to get small and small minority firms into the section 8(d) Federal subcontracting program.

The committee held its final meeting in December 1980. Again, the committee's major focus was section 8(d). For example, during the meeting, a White House representative discussed the committee's letter to the President regarding changes to OFPP Circular 80-2; procurement officials from two major corporations briefed the committee on their firms' involvement in implementing section 8(d); and SBA's Deputy Associate Administrator for Procurement Assistance discussed SBA's implementation of section 8(d), as mandated by Public Law 95-507. The Advisory Committee never mentioned the objectives/goals committee it had established in October. According to an SBA Office Director, who was a member of the objectives/goals committee, specific goals and objectives were not established because a new President had been elected and the Advisory Committee members believed that they should resign. Therefore, the objectives/goals committee never met.

Also, the SBA Office Director said that the Advisory Committee was unable to function after the December meeting because of the possibility that the newly elected President would request the members to resign. The committee submitted its first annual report to the President and the Congress in April 1981.

The committee's report further exemplifies the attention the committee placed on analyzing SBA's section 8(d) Federal subcontracting program. Although the Congress gave SBA the primary responsibility for ensuring and evaluating compliance by Federal agencies with the subcontracting provisions of section 8(d), according to the annual report, the Advisory Committee concluded that it could best assist in implementing section 7(j)(3) by focusing on marketing section 8(d)'s subcontracting plan requirements to the private sector. As a result of the committee's activities, the report contained findings and recommendations primarily regarding section 8(d)'s implementation and status.

On July 7, 1981, the services of the Advisory Committee members were terminated. Candidates are now being considered for the new Advisory Committee.

THE ADVISORY COMMITTEE DID NOT  
STUDY USE OF NOR HAS SBA USED  
INCENTIVES TO PROMOTE SUBCONTRACTING

The Small Business Act authorizes SBA to use incentives or assistance, among other things, to encourage large businesses to buy from small and small minority firms. According to Senate Report 95-1070, this authority was one of the most important provisions in the Small Business Act for strengthening disadvantaged firms and, although SBA had had this authority since 1967, it generally had not been used. To ensure that SBA used its authority, the Congress, in Public Law 95-507, created the Presidential Advisory Committee to advise SBA on how to foster more private sector purchases from small and small minority businesses.

To exemplify the emphasis placed on SBA's potential use of incentives and assistance to promote subcontracting opportunities, Executive Order 12190, dated February 1, 1980, which established the Advisory Committee, states that

"The Committee shall assist in monitoring and encouraging the placement of subcontracts by the private sector with eligible small businesses, particularly with small minority businesses, and shall study and propose the incentives and assistance needed by the private sector to help in the training, development, and upgrading of such businesses."

Although the Advisory Committee met four times during calendar year 1980, the use of incentives and assistance to encourage large businesses to acquire goods and services from small businesses was never discussed during committee meetings. According

to an SBA Office Director who was assisting the committee, the committee did not take action on using incentives because OFPP requested that all Federal agencies not aggressively pursue using them. The Deputy Associate Administrator, OFPP, told us that his office did not issue any policy statements regarding the implementation of section 7(j)(3) incentives, although OFPP requested a careful and slow look at the incentives provided by section 8(d). We believe the Advisory Committee's focus on section 8(d) Federal subcontracting, as previously discussed, may have been a major factor in causing the committee to neglect the study of section 7(j)(3) incentives related to private sector subcontracting.

ACTIONS SBA HAS TAKEN TO ASSIST  
SMALL AND SMALL MINORITY BUSINESSES  
TO OBTAIN PRIVATE SECTOR SUBCONTRACTS

Since our August 1980 report, SBA has taken some actions to help small and small minority businesses compete in the private sector. On September 29, 1980, December 1, 1980, January 29, 1981, and July 30, 1981, SBA entered into 1-year agreements with four major corporations to aid in developing 8(a) manufacturing firms which had demonstrated the capability of successfully performing Government contracts and subcontracts. SBA initiated these agreements as a pilot demonstration program to open up competitive markets to 8(a) manufacturing concerns. However, as of September 8, 1981, these agreements had resulted in only two subcontracts for small and small minority businesses. Also, two of the four agreements are with corporations that are already required to submit subcontracting plans under another section of the law. As a result, few, if any, additional subcontracts are likely to result from the two agreements.

Under the agreements, SBA is to provide the corporations with profiles on selected 8(a) manufacturing firms that corporate personnel will review, and whenever appropriate, make onsite visits to determine the firms' potential for becoming corporate suppliers. SBA is also negotiating a similar agreement with one other corporation. According to SBA's Program Manager for the agreements, as of September 8, 1981, only two contracts had been awarded to 8(a) firms as a result of the four agreements, although more than 100 SBA referrals had been made to the participating corporations. The Program Manager said that SBA wants to evaluate the effectiveness and results of agreements with only five companies before entering into others.

We noted that two of the corporations that entered into agreements with SBA have a substantial amount of Federal Government sales which require them to submit Federal subcontracting plans. In effect, these companies are already required by law to subcontract with small and small minority businesses. Although the agreements are focused on obtaining private sector opportunities for 8(a) firms, we believe that SBA needs to give priority

to, or emphasize, entering into any future agreements with corporations that are not heavily engaged in supplying the Federal Government with goods and services. These are the companies that are not already required, in effect, to subcontract or purchase from small and small minority businesses.

In addition to the above, SBA has also entered into two contracts to try to help obtain subcontracts for small and small minority businesses. On May 20, 1980, SPA awarded a \$129,931 contract to a national association to expand 8(a) firms' private sector business. The association was to provide marketing and management assistance to selected 8(a) firms, with the objectives of helping these firms move from exclusive Government contracting into the mainstream of commerce and industry; enhancing the growth capabilities of these firms; and expanding the scope of their activity in the commercial market. We believe this is the type of effort that was intended under section 7(j)(3).

On September 25, 1980, SBA awarded another contract (\$49,972) to a national trade association to develop a national marketing program to generate subcontracts for minority-owned manufacturing and technical companies with respect to Federal defense prime contractors and their subcontractors. Specifically, the association's primary task was to identify five major defense prime contractors and secure the cooperation of Department of Defense officials in generating subcontracts for minority businesses from the identified prime contractors. This contract is not the primary type of effort that was intended under section 7(j)(3), although it could conceivably be used to foster opportunities for private sector subcontracting.

In addition to these initiatives, SBA is required under section 8(b)(2) of the Small Business Act to maintain a source list on small and small minority businesses having an interest in Government contracting or subcontracting. In accordance with this requirement, SBA, with the assistance of the Department of Energy, developed the Procurement Automated Sources System (PASS), which became operational in October 1978. Under PASS, small and small minority businesses complete a profile application specifying their size, capabilities, and prior experience. Once in the system, this information can be accessed through 86 display terminals and printers located at SBA regional offices and major purchasing centers of selected Government agencies and private organizations and companies. Through SBA's continued promotional efforts, the system's inventory has grown from about 29,000 firms in July 1980 to about 52,920 as of September 1981, including more than 9,900 minority-owned companies.

Although PASS was designed primarily for Government contracting, any private company or organization can use the system's data base by contacting SBA. In August 1980, we reported that no private company had on-line access to PASS. Since then, however, SBA has granted on-line access to more than 20 private companies and organizations. We believe this initiative will increase the

potential for marketing the goods and services of small and small minority businesses in the private sector.

#### CONCLUSIONS

The Advisory Committee focused its efforts exclusively on SBA's section 8(d) Federal subcontracting program instead of on 7(j)(3) private sector subcontracting. The committee did not (1) develop a specific plan for promoting contracts and subcontracts for small and small minority businesses from the private sector, outside of Federal procurements, (2) establish functional responsibilities, short-range goals, and a procedure for monitoring and evaluating progress, and (3) study and propose any incentives and/or assistance the private sector needs to help train, develop, and upgrade small and small minority businesses, as outlined in Executive Order 12190.

In accordance with the intent of section 7(j)(3), SBA has taken some actions to promote the goods and services of small and small minority businesses in the private sector, such as the four corporate agreements, contractual efforts, and private sector use of PASS. Although the four agreements with the large corporations have the potential to increase the participation of small and small minority businesses in private sector procurements, two of the agreements are with Federal prime contractors. As a result, SBA has not maximized subcontracting opportunities for small businesses because these two contractors are required by law to submit subcontracting plans that already include small and small minority businesses as potential subcontractors. SBA has referred about 100 small businesses to the four corporations, but the corporations have provided these businesses with only two subcontracts.

#### RECOMMENDATIONS

We recommend that the Administrator of SBA, together with the new Advisory Committee, develop a specific plan for promoting contracts and subcontracts for small and small minority businesses from the private sector, outside of Federal procurements. This plan should include (1) functional responsibilities of both SBA and the Presidential Advisory Committee, (2) short-range goals, and (3) a procedure for monitoring and evaluating progress.

Also, we recommend that the Administrator, together with the Presidential Advisory Committee, pursuant to the Small Business Act and Executive Order 12190, "study and propose the incentives" and/or assistance the private sector needs to help train, develop, and upgrade small and small minority businesses.

In addition, to maximize subcontracting opportunities for small businesses, we recommend that the Administrator require that in obtaining future agreements to promote subcontracting, priority be given to corporations that are not heavily engaged

in supplying goods and services to the Federal Government and, therefore, not already required by law to use small businesses as subcontractors.

SBA COMMENTS

In commenting on our report, SBA agreed with our recommendations and said that, when the new Presidential Advisory Committee is formed, SBA will proceed with our recommendations concerning section 7(j)(3) subcontracting.

## CHAPTER 3

### SBA STILL HAS NOT IMPLEMENTED THE SURETY FOND WAIVER PROVISION

SBA still has not implemented the section 8(a) surety bond waiver provision of the Small Business Act, which was enacted as part of Public Law 95-507 in October 1978 and is due to expire September 30, 1981. Final regulations concerning the provision were published in the Federal Register on December 17, 1980, but the detailed Standard Operating Procedures (SOPs) that SBA field offices need to identify and process a bond waiver had not been finalized as of September 8, 1981, because of internal problems in clearing them. As a result, no bond waivers had been granted to 8(a) firms.

Even if the provision had been implemented when it was passed, only one firm would have qualified for a surety bond waiver based on our analysis of 8(a) firms that were refused bonding under SBA's Surety Bond Guarantee Program, a prerequisite for obtaining a bond waiver. However, some firms that were denied contracts or admittance into the 8(a) program because of their inability to obtain bonding might have been helped if the bond waiver provision had been implemented when it was passed.

Also, SBA Assistant District Directors and regional/district office Surety Bond Representatives who we interviewed raised several questions concerning the surety bond waiver provision and identified several reasons why the provision, as currently structured, may not be possible to implement in their areas or may create other problems. These concerns included (1) admitting firms into the 8(a) program that may be worse off financially than firms already in the program--firms SBA had determined were capable of obtaining bonding, but still cannot obtain contracts to help them develop into viable small businesses, (2) an SBA-imposed \$100,000 limit on the size of a contract for which bonding may be waived, (3) requiring that to be eligible, a firm cannot have been in the 8(a) program more than 1 year, (4) the practice at some SBA district offices of not admitting firms into the 8(a) program if the firms do not have the ability to obtain needed bonding either with or without an SBA guarantee, and (5) the impact on the availability of 8(a) contracts which Federal agencies provide to SBA voluntarily.

### BACKGROUND

Under section 8(a) of the Small Business Act, SBA is authorized to enter into procurement contracts with Federal agencies for the purpose of subcontracting to small businesses that are socially and economically disadvantaged. The program's purpose is to help these businesses become competitive in the marketplace. Federal agencies voluntarily provide contracts to SBA, which in turn subcontracts noncompetitively with eligible

8(a) firms. As of September 30, 1980, SPA had provided contracts totaling \$5.5 billion to 8(a) firms. Of the 4,598 firms that have participated in the program, 1,705 were construction firms.

Surety bonding is basically a three-party relationship in which the surety (bonding company), for a fee, makes itself responsible for obligations which the contractor owes the owner or other persons with whom it contracts (SBA under the 8(a) program). Surety bonding is often a prerequisite, especially for construction work, for obtaining both Government and private contracts. The Miller Act (40 U.S.C. 270a et seq.), for example, requires surety bonds on all Federal construction contracts of \$25,000 1/ or more.

#### Surety Bond Guarantee Program

Under its Surety Bond Guarantee Program, SBA guarantees contract bonds for small construction, service, or supply contractors. The Congress established the program in 1970 to alleviate bonding difficulties confronting small contractors. SBA is authorized to guarantee up to 90 percent of a surety company's losses resulting from breach of contract for which bonds are less than \$250,000 and 80 percent for bonds from \$250,000 to \$1,000,000. SBA's Office of Special Guarantees administers the program.

#### Surety bond waivers

The surety bond waiver provision of Public Law 95-507 authorizes the SBA Administrator to waive any bond required by a Government procurement officer for, and in connection with, any 8(a) contract. As a practical matter, bond waivers are limited to 8(a) construction contracts--SBA's 8(a) program procedures state that the procuring agency (Federal agency providing the contract to SBA) "shall be requested not to require bonds in non-construction contracts except where such requirement is absolutely essential to protect the interests of the Government." The Administrator may waive bonding only if

- the firm is an eligible 8(a) contractor;
- the firm has not been in the 8(a) program longer than 1 year;
- the firm is a startup concern (defined by SBA as a firm that has not been engaged in activities requiring payment and/or performance bonds longer than 2 years);
- SBA finds the required bond is unavailable with or without an SBA guarantee;

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1/The Congress raised the limit from \$2,000 to \$25,000 in November 1978.

--SBA assists, insofar as practicable, the firm receiving a waiver to develop, within a reasonable time, the capability needed to obtain bonds; and

--SBA takes measures to protect laborers and suppliers under the contract.

In addition to the stated statutory requirements, SBA's proposed SOPs for surety bond waivers (1) limit to \$100,000 the amount of a contract on which a bond may be waived and (2) require the firm to demonstrate that if a waiver is granted and the contract obtained, it will successfully perform such contract and develop the potential to obtain within a reasonable time such bonds as SBA may subsequently require.

SBA has determined that any defaults resulting from contracts for which SBA has waived surety bonding will be paid from the section 4(c)(1)(B) Business Loan Fund--a fund used to finance functions performed under section 8(a) of the Small Business Act, as amended.

In our August 1980 status report, we stated that, at that time, SBA had not implemented the surety bond waiver provision, and a major cause appeared to be a disagreement or misunderstanding between two SBA offices--the Office of Minority Small Business and Capital Ownership Development (MSB/COD) and the Office of Special Guarantees. The latter office had the personnel with surety bonding knowledge, but the law placed responsibility for the bond waiver provision with MSB/COD. We reported that MSB/COD had relied on the Office of Special Guarantees to initiate actions to implement the bond waiver provision but that office had not taken any action because it had no direct responsibility for implementing or administering the provision.

In addition, we reported that MSB/COD had not given the surety bond waiver provision the priority accorded other Public Law 95-507 provisions and that this lack of priority had contributed to the delay in implementing the bond waiver provision.

SBA has recently taken action to clarify the responsibilities of MSB/COD and the Office of Special Guarantees concerning surety bond waivers, as our report recommended. Also, as we recommended, SBA's proposed SOPs outline the process for identifying and referring bond waiver candidates to the appropriate SBA offices. These procedures, however, had not been finalized as of September 13, 1981.

#### EXTENT OF NEED FOR SURETY BOND WAIVERS IS STILL UNKNOWN

SBA did not issue final surety bond waiver regulations in a timely manner and had still not issued SOPs for bond waivers as of September 8, 1981. Accordingly, SBA field offices have been unable to identify and process surety bond waivers and no waivers had been granted as of that date.

SBA published proposed bond waiver regulations in the Federal Register on April 4, 1980--17 months after Public Law 95-507 was enacted (Oct. 24, 1978). The reasons for the delay in implementing the program are discussed in our August 1980 report, as mentioned earlier. Although final regulations were published on December 17, 1980, SBA's field offices still did not have detailed procedures necessary to identify, approve, and process a surety bond waiver.

In addition, even if detailed procedures are issued in the near future, there will not likely be any bond waivers granted because of the Administrator's May 1, 1981, moratorium on admitting new firms into the 8(a) program. The moratorium was imposed to allow SBA to determine which 8(a) firms had been in the program long enough to be self-sufficient and, therefore, should "graduate." As a result of the moratorium, the number of potential bond waiver candidates has decreased and is decreasing daily because of the statutory requirement that limits bond waiver eligibility to firms that have been in the 8(a) program not more than 1 year.

Furthermore, based on SBA statistics, only one firm would have been eligible for a waiver through June 1981 if the provision had been implemented when it was passed in October 1978. To be eligible for a surety bond waiver, a firm must be an 8(a) firm and have been refused bonding under SBA's Surety Bond Guarantee Program. Based on SBA statistics for the period October 1978 through June 1981, 6,085 applications were received for bonding under the guarantee program from firms identified as 8(a) firms. Only about 2 percent (144) of the purported 8(a) applicants were refused bonding under the program. Also, about 3 percent (183) of the applicants withdrew their applications. Our analysis of the 144 applicants who were denied bond guarantees showed that 87 firms were not eligible for surety bond waivers because they were not 8(a) firms. Of the remaining 57 firms, 48 had been in the 8(a) program longer than 1 year and were, therefore, not eligible. Six of the remaining nine firms had been in business longer than the maximum 2 years and two of the three applicants, who otherwise met the above criteria, wanted bonding on contracts that exceeded \$100,000. Accordingly, SBA's surety bond waiver provision would potentially have assisted only one 8(a) firm had it been implemented immediately after it was added to the Small Business Act.

SBA DISTRICT AND REGIONAL  
OFFICE OFFICIALS' CONCERNs  
WITH SURETY BOND WAIVERS

SBA's 10 Assistant District Directors for MSB/COD, a Business Development Specialist, and 4 regional or district Surety Bond Representatives with whom we spoke raised several questions concerning the surety bond waiver provision and identified several reasons why the provision, as currently structured, may not be possible to implement in their areas or may create other difficulties. These concerns are discussed on pages 15 through 20.

Concerns with bond waiver provision as related to other Public Law 95-507 provisions

SEA district office officials questioned the purpose of the surety bond waiver provision in view of other provisions in Public Law 95-507 which appear to conflict with the reasons for establishing bond waivers. For example, one Assistant District Director said that Public Law 95-507 made eligibility for the 8(a) program much more stringent by requiring that firms be socially and economically disadvantaged instead of socially or economically disadvantaged. Also, he mentioned that before Public Law 95-507, firms on the verge of bankruptcy were admitted into the program. Now, however, he said that SBA must determine whether a firm has the potential to develop into a viable business before it can be admitted into the program.

In addition to social and economic disadvantage, the law requires that no small firm be made eligible under the program unless SBA determines that (1) with contract, financial, and other support the firm will be able to perform contracts awarded under the program and (2) the firm has reasonable prospects for success in competing in the private sector. Section 8(a)(2) of the Small Business Act, as amended, requires that SBA assist, insofar as practicable, a small business receiving a bond waiver to develop, within a reasonable time, the financial and other capabilities needed to obtain bonds. SBA's General Counsel has stated that this requirement means SBA "should waive the bond only if SBA can correct the defect(s) for which the surety rejected the bond application." For example, if a firm is turned down because of equipment needs, SBA may waive bonding if the firm is given help to obtain the equipment. The General Counsel said that if a business owner is turned down because he or she is incompetent or unreliable, then it is not "practicable" or "reasonable" to try to assist him or her, and, therefore, SBA may not waive bonding.

In addition, an August 1978 Senate Select Committee on Small Business report (No. 95-1070) states that:

"SBA itself admits that the 8(a) program historically has been focused too heavily on the simple act of getting as many contracts as possible to small socially and economically disadvantaged firms, regardless of the long range potential viability as stable businesses at the end of the contracting or graduation period."  
(Underscoring added.)

The report also states that if a firm can never succeed on its own without 8(a) contracts, it not only would be a "cruel hoax" on the firm itself, but it would also be a waste of valuable resources that could otherwise be applied to other businesses that eventually could be successful.

Based on the requirements of Public Law 95-507, as mentioned earlier, an SBA Assistant District Director said that he was uncertain as to what the Congress was trying to do under the surety bond waiver provision. He said that bond waivers would seemingly allow firms into the 8(a) program that are worse off financially than those already in the program who were determined to be capable of obtaining bonding with or without an SBA guarantee. Although the committee's report indicated that some of the firms in the 8(a) program should not have been given a contract, the law now requires SBA to provide contracts to firms that cannot obtain bonding even with an SBA guarantee.

A Business Development Specialist and 9 of the 10 SBA Assistant District Directors with whom we spoke said that either (1) they would not admit a construction firm into the 8(a) program that did not have the ability to obtain bonding or (2) they would not give a contract to an 8(a) firm that could not at least obtain bonding with an SBA guarantee. SBA's procedures permit discretion in admitting firms into the 8(a) program. This matter is discussed more fully on page 19.

These officials stated that all firms are admitted to the 8(a) program if they have a reasonable chance of developing into competitive firms and if there is reasonable likelihood of the continuity of 8(a) contracting support necessary for their development. However, five of the officials acknowledged that they have more contractors in the 8(a) program than contracts to support them. This was illustrated in our recent report to the Congress entitled "The SBA 8(a) Procurement Program--A Promise Unfulfilled" (CED-81-55, Apr. 8, 1981). The report states that SBA has not been graduating or terminating firms from the program after they have had ample time to develop, resulting in other disadvantaged firms being denied entry into the program. The report points out that 396 (45 percent) of the 879 firms that applied for admittance to the program between October 1978 and September 30, 1980, were rejected, mostly because SBA did not have the potential contracts to support them. Therefore, it seems questionable for SBA to admit firms into the 8(a) program that do not have the ability to obtain bonding as called for under the bond waiver provision, while at the same time it does not have sufficient contracts to support the firms that do have bond ability and are already in the program.

Surety bond waiver eligibility criteria questioned

Eleven SBA Assistant District Directors and Surety Bond Representatives expressed concern with at least one of the eligibility requirements for bond waivers. As a result, they questioned whether the bond waiver provision could be implemented in their areas. The eligibility requirement mentioned most frequently was the SBA-imposed \$100,000 limitation on the amount of an 8(a) contract on which a bond can be waived. One district

official said that the \$100,000 limitation made the bond waiver provision, "impossible" to implement. The statutory requirement that a firm cannot participate in the 8(a) program more than 1 year and still be eligible for bond waivers was also a concern of several of the officials.

Ten of the 12 district and 3 regional office officials with whom we spoke expressed concern about or agreed that the \$100,000 limitation was really too low. Many said that the average dollar amount of 8(a) construction contracts in their areas was considerably above \$100,000. Only in the Richmond, Virginia, district office were we told that the average was about \$100,000. Some examples of the averages were: San Francisco district office, \$200,000 to \$400,000; Denver district office, \$225,000 to \$250,000; Los Angeles district office, \$300,000; and the New York district office, \$400,000 to \$500,000.

An SBA regional office Surety Bond Representative said that the qualifications necessary to obtain a surety bond waiver were "too strict." He mentioned that a \$100,000 contract was too small and not much of a problem to bond, and 8(a) firms could not develop on such small contracts. Also, a vice president for the Minority Contractors Assistance Project, Inc. (MCAP) <sup>1/</sup> told us that, in his opinion, SBA had not used the bond waiver provision because of the restrictions that had been placed on it. He mentioned the \$100,000 limitation, as well as the time a firm could be in the 8(a) program and still qualify--1 year. Also, he said that it would not be difficult for a firm to get an SBA guarantee on a \$100,000 bond. Three of the SBA district office officials we interviewed agreed that obtaining bonding for \$100,000 contracts was not a problem under the SBA Surety Bond Guarantee Program.

Three of the SBA Assistant District Directors and Surety Bond Representatives and a Business Development Specialist we contacted said that they believed that if an 8(a) contractor could not obtain bonding with an SBA guarantee, it would be "an injustice" to grant a bond waiver, or the firm would probably fail. One of the officials said that the contract work would probably not be performed and a default would result. A Business Development Specialist from another district said that a firm that needed a waiver was probably not well off financially and, therefore, likely to fail. An Assistant District Director from yet another SBA district office said that if a firm was so bad financially that it could not obtain bonding, it should not be helped with an SBA waiver because it would either go bankrupt or not be able to perform the contract. Also, an SBA Assistant

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<sup>1/A</sup> Washington, D.C.-based, nonprofit corporation created to help minority contractors obtain a larger share of the construction industry. It provides precontract services, contract performance services, and business support services.

District Director from another district office said that bond waivers could create a lot of problems for SPA. For example, he said that procuring agencies might not want to take the risk associated with bond waivers because it could adversely affect contract performance.

Concerning the above comments questioning the financial condition of small businesses that cannot obtain bonding under SBA's Surety Bond Guarantee Program, we noted that the one firm that met the eligibility requirements for a surety bond waiver, based on our analysis of SBA statistics, did not appear to be financially stable. According to SBA, the firm had a deficit net worth of \$113,000, a working capital deficit of \$30,000, and did not have a letter of credit evidencing ability to finance the contract work.

The SBA Assistant District Directors and Surety Bond Representatives with whom we spoke generally agreed that bonding was a problem for 8(a) firms, but the real problem was obtaining bonding for the larger contracts. One official said that most surety companies like to see a firm progress from a \$100,000 contract to a \$200,000 contract, but that 8(a) firms experience difficulty in obtaining bonding for contracts that are this much larger than their previous high-bonded contract. Another SBA official said that SBA needed to address the problem of 8(a) firms obtaining bonding on large contracts without an SBA guarantee. Also, another district official said that SBA did not need a waiver for \$100,000 contracts because, with an SBA guarantee, surety companies would provide bonding for this amount. The official said that larger contracts (\$300,000 and over) were where bond waivers could help. An official from yet another district office said that the 8(a) firms that needed help the most were those that could not get bonding on larger contracts. He pointed out that these firms could not grow and develop even though they had the ability to do so.

Also, the MCAP vice president stated that bonding was not much of a problem for 8(a) firms performing the smaller jobs. He said that SBA should address the bonding problem that exists for those 8(a) firms that have a chance to demonstrate the capability to perform contracts of \$250,000 or more.

We believe that developing 8(a) firms to handle larger contracts may become even more important now than in the past because SBA, in accordance with Public Law 96-481 (Oct. 21, 1980), has started setting dates for graduating firms from the program. As a result, it seems important that firms be able to develop their abilities to perform larger contracts so that when they are graduated from the 8(a) program they will have established a track record that will enable them to obtain bonding on non-8(a) contracts.

Concerning the requirement that a firm cannot be in the 8(a) program more than 1 year and be eligible for a bond waiver, 10 of the SBA Assistant District Directors and Surety Bond Representatives that we interviewed either gave this as a reason there had been no waivers or questioned it. One SBA district official who said that the bond waiver provision would be impossible to implement in his district because of the eligibility criteria, cited the 1-year restriction and the requirement that the firm had to be a new startup as very limiting. The MCAP vice president also questioned the 1-year restriction and said that a startup firm was the type of firm for which bonding should not be waived because of its greater likelihood of failure.

#### Bond ability affects admittance into the 8(a) program

A firm's ability to obtain bonding with or without an SBA guarantee helps determine whether it will be admitted to the 8(a) program in some SBA district offices. As a result of this practice, firms that are determined to be unable to obtain bonding are not admitted and, therefore, not eligible for a surety bond waiver--only 8(a) firms are eligible for bond waivers. No statistics are kept to show how many firms have not been admitted to the 8(a) program for this reason.

As previously mentioned, Public Law 95-507 requires that firms must be socially and economically disadvantaged to be eligible for the 8(a) program. SBA's SOPs (80-05) for the 8(a) program state that

"Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same line of business and competitive market area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, consideration shall be given but not limited to \* \* \* success in obtaining adequate bonding \* \* \*. (Underscoring added.)"

Nine of the SBA Assistant District Directors and a General Business and Industry Specialist from SBA's Office of 8(a) Eligibility whom we interviewed acknowledged that a firm's ability to obtain bonding was a factor for acceptance into the 8(a) program. Five said that if a firm could not obtain bonding or had not established some track record it would not be admitted to the program. Also, many of the officials acknowledged that there were more 8(a) firms than there were contracts to develop them and, according to one Assistant District Director, it is conceivable that the waiver provision will never be used as long as bondable 8(a) contractors are available to whom contracts can be awarded.

Also, one SBA Assistant District Director said that three 8(a) firms in his district were in "dire need of bonding," but they should not be in the 8(a) program because they had not developed a track record on small contracts, although they had been given the opportunity. An Assistant District Director from another district said that the inability to obtain bonding was a "considerable deterrent" to the firm that wishes to participate in the 8(a) program.

Impact of surety bond waivers  
on the 8(a) program

Waiving the requirement for surety bonding may have a negative impact on the availability of contracts under the 8(a) program, according to some SBA Assistant District Directors. As a result, the number of 8(a) firms that are given the opportunity to develop into viable small businesses could be adversely impacted.

Officials from 5 of the 11 SBA district offices that we contacted expressed concern about how the Federal agencies providing 8(a) contracts to SBA would react to SBA waiving surety bonding required by the Miller Act. An Assistant District Director said that he believed the agencies would take a "dim view" of any bond waiver and more than likely would not contract with a firm that could not obtain bonding. An Assistant District Director in another district said that it would be increasingly difficult to persuade agencies to contract with an unbondable contractor. Also, an Assistant District Director from yet another district said that if an agency had to waive bonding, it would probably stay away from the 8(a) program.

In addition to the above concerns, an SBA Chief Counsel told us that if a contractor that received a surety bond waiver defaulted, the agencies might not want to give SBA any future contracts. He said that once the procuring agency gives SBA a contract, however, SBA would not have to get permission from the agency to waive bonding. Also, he said that SBA would be liable for contract performance if the 8(a) firm for whom bonding was waived defaults.

We discussed the surety bond waiver provision with the three primary agencies that have provided 8(a) construction contracts to SBA--the Department of Transportation, the U.S. Air Force, and the Veterans Administration. (As of Sept. 30, 1980, the three agencies had provided about 50 percent of all 8(a) construction contracts to SBA since the 8(a) program began in 1969.) These three agencies' reactions to surety bond waivers were mixed. For example, a Deputy Office Director from the Air Force said that waivers would probably have no impact on the agency's support of the 8(a) program. An Office Director from the Veterans Administration said he believed that his agency would not want to go along with bond waivers because of past problems with 8(a) contractors. This official would not rule out the possibility that

a reduced number of 8(a) contracts from his agency could result and said that if SBA wanted to waive bonding, the contract could possibly be withdrawn. Also, a Veterans Administration Assistant Director said that his agency did not always award contracts to SBA-selected 8(a) firms for various reasons, such as inability to agree on price. A Division Chief from the Department of Transportation said that curtailment of the agency's support of the 8(a) program might be considered if SBA waives bonding on his agency's contracts. He further stated that his primary problem with the 8(a) program was with how SBA awarded and administered the contracts--Transportation does not have a voice in determining which 8(a) firms are selected to perform the contracts.

#### CONCLUSIONS

As of September 8, 1981, SBA still had not implemented the surety bond waiver provision passed in October 1978. Final regulations concerning the provision have been published but detailed procedures needed by SBA field offices to identify and process waivers had not been finalized. Our analysis of SBA data on 8(a) firms denied surety bond guarantees, a prerequisite for eligibility for a bond waiver, showed that only one 8(a) firm would have been eligible for a surety bond waiver even if SBA had implemented the provision when it was passed. Furthermore, SBA Assistant District Directors and Surety Bond Representatives with whom we spoke have raised several questions about surety bond waivers which may jeopardize implementation and/or use of waivers in their districts, as well as create other difficulties. Despite our analysis showing that only one firm would have met the eligibility requirements for a surety bond waiver and the concerns SBA officials raised questioning whether the waiver provision can be implemented in their areas, we believe that the surety bond waiver provision's September 30, 1981, expiration date needs to be extended because SBA has not implemented the provision. Procedures needed to implement the provision, or identify and process surety bond waivers, have not been issued. Firms previously denied contracts or admittance into the 8(a) program might have been assisted if SBA had implemented the surety bond waiver provision when it was passed.

#### MATTER FOR CONSIDERATION BY THE CONGRESS

To allow SBA sufficient time to (1) implement the surety bond waiver provision, (2) resolve, if found substantiated, the surety bond waiver concerns perceived by its field offices, and (3) determine how effective the provision will be in assisting small and small minority businesses, we suggest that the Congress consider extending the surety bond waiver provision 2 years, to September 30, 1983, and require SBA to report to the Congress on the provision's effectiveness before the revised expiration date.

SEA COMMENTS

SBA agreed that a 2-year extension of the bond waiver provision will enable SBA to (1) finalize and distribute implementing procedures to its field offices, (2) identify eligible concerns that have a need for bond waivers, and (3) monitor and report on the effectiveness of the bond waiver provision.

REPORTS GAO ISSUEDPURSUANT TO PUBLIC LAW 95-507

1. "Status Report on Small and Small Minority Business Subcontracting and Waiver of Surety Bonding for 8(a) Firms" (CED-80-130, Aug. 20, 1980)

The Small Business Administration has not fully implemented the section 7(j)(3) subcontracting program and the section 8(a)(2) surety bond waiver provision of the Small Business Act. Under section 7(j)(3), SBA, with the assistance of a presidentially appointed Advisory Committee, is to encourage large businesses to place subcontracts with small firms. Problems impeding progress in implementing section 7(j)(3) include

- delays in establishing the Presidentially appointed Advisory Committee,
- the lack of specific committee functions and goals, and
- the exclusive focus of the committee on Federal subcontracting instead of on private sector subcontracting.

Despite problems in implementing section 7(j)(3), SBA has taken several actions to help small and small minority businesses compete in the private sector.

Under the surety bond waiver provision, the SBA Administrator is authorized to waive any bond required by a Government procurement officer on contracts under SBA's section 8(a) Business Development Program. This provision also has not been implemented. A major cause for this appears to be a disagreement or misunderstanding between two SBA offices concerning who was responsible for implementing the provision.

GAO makes recommendations to help alleviate the problems impeding implementation of the two provisions.

2. "Most Borrowers of Economic Opportunity Loans Have Not Succeeded in Business" (CED-81-3, Dec. 8, 1980)

SBA's Economic Opportunity Loans have not been an effective way to help disadvantaged people start or improve their own businesses. More borrowers have defaulted on the loans than have repaid them. Many who paid off their loans have not remained in business. Furthermore, the

outlook for borrowers with active loans is not good since many are in financial difficulty.

The program provides services to borrowers whose limited capital, inexperience, and other factors make high rates of loss and business failure unavoidable. Nevertheless, program results could improve if SBA changed the way it manages the program and took measures to help borrowers overcome their undercapitalization and inexperience.

If program results do not improve, congressional oversight committees should determine whether the program's objectives could be better achieved by transferring its funds to other Federal programs for disadvantaged businesses.

3. "The 8(a) Pilot Program for Disadvantaged Small Businesses Has Not Been Effective" (CED-81-22, Jan. 23, 1981)

SBA's use of a special pilot program which gives it the authority to demand contracts for the 8(a) program has not been successful.

SBA (1) did not have enough information to properly assess and match 8(a) firms' capabilities with pilot procurements and (2) approved 8(a) firms to perform pilot contracts without knowing their capabilities. GAO believes SBA made a poor choice of those firms that were awarded the three initial pilot contracts.

There is a difference between Army, which was selected as the pilot agency, and SBA over the way the pilot program can be used most effectively. GAO is recommending that the Congress allow further testing of the pilot program in an additional agency that, unlike the Army, has not demonstrated its complete support of the 8(a) program.

4. "The SBA 8(a) Procurement Program--A Promise Unfulfilled" (CED-81-55, Apr. 8, 1981)

SBA's 8(a) Procurement Program gives noncompetitive Government contracts and other aid to help disadvantaged business owners become self-sufficient. Few aided firms have graduated as competitive businesses. The bulk of 8(a) contracts has gone to a select group of firms. Many firms have not built up commercial sales, rely on 8(a) contracts, and view the program as an end in itself.

SBA is reluctant to remove from the program firms that are needed to meet yearly contract volume goals. Because of this, other disadvantaged firms cannot participate. Insufficient staff, vague graduation criteria, and poor records

APPENDIX I

APPENDIX I

also hamper the program's effectiveness. Further, the small business community is concerned about the program's future impact on its businesses.

GAO proposes several alternatives and recommendations to restructure the 8(a) program and resolve its problems.

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